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EX PARTE OR LATE FILED

STATE OF INDIANA

INDIANAPOLIS 46204

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

January 24, 2000

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

RECEIVED
JAN 27 2000
FCC MAIL ROOM

RE: Two copies filed in the following docket: *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147

Dear Ms. Salas:

This letter is intended to comply with the FCC's rules on *ex parte* communications. Today, the Indiana Utility Regulatory Commission (IURC) files a letter previously sent to Larry Strickling, Chief of the Common Carrier Bureau, which requests clarification of the rules adopted by the FCC's First Report and Order and Notice of Further Rulemaking in CC Docket 98-147 (released March 31, 1999). The IURC sent this letter to Mr. Strickling on January 18, 2000 to seek guidance on the implementation of the conditions imposed on the merger between SBC Communications Inc. and Ameritech Corporation. Common Carrier Bureau staff subsequently recommended that the IURC file this letter in CC Docket 98-147, since many of the issues raised by our letter are currently being considered in that proceeding. Therefore, we submit two copies of our January 18, 2000 letter for consideration in that proceeding.

If you have any questions about this correspondence, please contact me at 317/232-2523.

Sincerely,

Sandra Ibaugh

Sandra Ibaugh
Director of Telecommunications

CC: Lawrence Strickling- Chief, Common Carrier Bureau, FCC
Anthony Dale – Accounting Safeguards Division, FCC
William McCarty - Chairman, IURC
Camie Swanson-Hull - Commissioner, IURC

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E308



INDIANAPOLIS, 46204

VERIFIED SUBMISSION OF INDIANA BELL)
TELEPHONE COMPANY, INC. D/B/A)
AMERITECH INDIANA FOR COMMISSION)
APPROVAL OF AN INTERCONNECTION)
AGREEMENT ARRIVED AT THROUGH)
VOLUNTARY NEGOTIATIONS WITH)
DIVERSIFIED COMMUNICATIONS, INC.)
WITHIN NINETY (90) DAYS AND WITHOUT)
HEARING PURSUANT TO AND IN ACCORDANCE)
WITH SECTION 252(E) OF THE FEDERAL)
TELECOMMUNICATIONS ACT OF 1996,)
PUB. L. NO. 104-104, 110 STAT. 56 (1996))
[CODIFIED AT 47 U.S.C. §252(E)])

CAUSE NO. 40572 INT 61

FILED

JAN 19 2000

INDIANA UTILITY
REGULATORY COMMISSION

You are hereby notified that on this date, the Indiana Utility Regulatory Commission has caused the following entry to be made:

On November 8, 1999, Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech Indiana") filed a Verified Submission with the Commission commencing this Cause, pursuant to and in accordance with Section 252(e) of the federal Telecommunications Act of 1996 (the "Act"). Ameritech Indiana seeks approval, under Section 251 and 252 of the Act, of an interconnection agreement (the "Agreement"), dated October 20, 1999 between Ameritech Indiana and Diversified Communications, Inc. ("Diversified") within 90 days after its submission, on or before February 7, 2000, without hearing pursuant to Section 252(e)(4) of the Act (47 U.S.C. §252(e)(4)), and pursuant to the Amended Interim Procedural Order issued in Cause No. 39983, dated August 21, 1996.

On October 6, 1999, the Federal Communications Commission ("FCC") approved the merger between Ameritech Corporation and SBC Communications Inc. ("SBC")¹. The approval of the merger was based upon conditions with which the parties must comply. The Commission issued an order in Cause No. 41268-INT17 on December 15, 1999 finding that several provisions of the Amendment to the previously approved interconnection agreement between Ameritech Indiana and DSLnet Communications, LLC may violate terms and conditions of the FCC's First 706 Order². The Commission also found that since the amendment was filed prior to the FCC's order of October 6, 1999, the Commission was not required to consider Ameritech Indiana's compliance. The Commission also stated that it expects that forthcoming interconnection

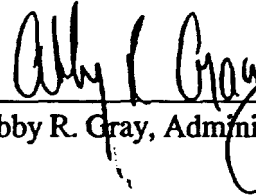
¹ In the Matter of Applications for Transfer of Control to SBC Communications, Inc. of Licenses and Authorizations Held by Ameritech Corporation, (CC Docket No. 98-141), released October 8, 1999.

² In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, released March 31, 1999.

agreements or amendments to existing interconnection agreements with Ameritech Indiana and other telecommunications carriers will comply with the FCC's First 706 Order.

It appears that some of the same language raised in our Order in Cause No. 41268-INT17 is also included in the instant interconnection agreement. Therefore, the presiding officer, being sufficiently advised in the premises, now finds that it is appropriate to request clarification from the FCC regarding this language and that the letter attached hereto should be forwarded to the FCC requesting clarification.

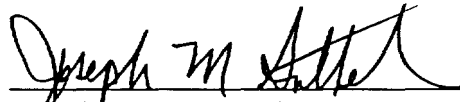
IT IS SO ORDERED, consistent with the foregoing findings.



Abby R. Gray, Administrative Law Judge

1-19-00

Date



Joseph M. Sutherland
Secretary to the Commission

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STATE OF INDIANA
ORIGINAL
INDIANA UTILITY REGULATORY COMMISSION

DSLNET COMMUNICATIONS, LLC'S)
PETITION FOR COMMISSION ACTION)
REGARDING ADOPTION OF)
INTERCONNECTION AGREEMENT)
PURSUANT TO SECTION 252(e) AND 252(i))
OF TA-96 TO ESTABLISH AN)
INTERCONNECTION AGREEMENT WITH)
INDIANA BELL TELEPHONE COMPANY,)
INCORPORATED, D/B/A)
AMERITECH INDIANA)

CAUSE NO. 41268-INT 17

ORDER ON
FIRST AMENDMENT

APPROVED:

DEC 15 1999

BY THE COMMISSION:

Claudia J. Earls, Administrative Law Judge

On September 24, 1999, Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech Indiana") filed a Verified Application with the Commission commencing this Cause, pursuant to and in accordance with Section 252(e) of the federal Telecommunications Act of 1996 (the "Act").¹ Ameritech Indiana seeks approval, under Section 251 and 252 of the Act, of a First Amendment dated August 24, 1999, to the previously approved interconnection agreement² between Ameritech Indiana and DSLnet Communications, LLC ("DSLnet"), within 90 days after its submission, without hearing pursuant to Section 252(e)(4) of the Act (47 U.S.C. §252(e)(4)), and pursuant to the Amended Interim Procedural Order issued in Cause No. 39983, dated August 21, 1996.

On June 5, 1996, in Cause No. 39983 referenced above, the Commission initially established generally applicable guidelines, practices and procedures to be followed by any entity seeking to file under the Act for approval of agreements. Those guidelines were modified by the Commission's Amended Interim Procedural Order in Cause No. 39983 dated August 21, 1996. On December 9, 1998, the Commission adopted General Administrative Order 1998-1, setting forth the policy governing the submission of interconnection agreements and amendments.

Within 20 days following the submission of this First Amendment, pursuant to the Commission's Amended Interim Procedural Order, neither the Office of the Utility Consumer Counselor nor any telecommunications carrier that was not a party to the negotiated First Amendment filed any written opposition or comments with regard to the Agreement. In view of the foregoing and based upon the Commission's guidelines applicable to voluntarily negotiated

¹ 47 U.S.C. 151 ET seq.

² With the Verified Application, Ameritech Indiana submitted the Agreement as Exhibit A thereto.

interconnection agreements and amendments, the Commission finds this matter ripe for issuance of its Order herein.

1. **Jurisdiction and Statutory Standard for Review.** Section 252(a)(1) of the Act provides that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of Section 251" for interconnection, services, or network elements. We find Ameritech Indiana to be an "incumbent local exchange carrier" as that term is defined in Section 251(h) of the Act and as used in Section 252(a) of the Act. We further find that DSLnet is a "telecommunications carrier" as that term is defined in Section 3(49) of the Act and as used in Section 252 of the Act.

Based upon the allegations of the Verified Application, it has been demonstrated that the First Amendment was arrived at through voluntary negotiations between the parties as contemplated in Section 252(a)(1) of the Act and addresses interconnection services provided pursuant to Section 251 of the Act. Pursuant to Section 252(a)(1) of the Act, an agreement arrived at through negotiations, "shall be submitted to the State Commission under subsection (e) of the section". Subsection 252(e)(1) states:

- (e) **APPROVAL BY STATE COMMISSION--**
 - (1) **APPROVAL REQUIRED.** - Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Based upon the foregoing, we find we have jurisdiction over the parties and subject matter of this proceeding.

Section 252 of the Act establishes procedural requirements and substantive review standards which a state commission must follow in determining whether to approve or reject agreements of the kind contemplated in Section 252(a) of the Act. Section 252(e)(2)(A) of the Act limits the grounds upon which a State commission may reject a negotiated³ agreement subject to its review under the Act. It states in pertinent part as follows:

- (2) **GROUND FOR REJECTION.--** The State commission may only reject--
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

³ Section 252(e)(2)(A) of the Act specifically pertains to agreements adopted by negotiation, while Section 252(e)(2)(B) pertains to agreements adopted by arbitration under Section 252(b) of the Act.

- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

Section 252(e)(4) of the Act provides that the State commission must either approve or reject the negotiated agreement within 90 days of it being submitted (in this Cause on or before December 22, 1999) or it "shall be deemed approved".

2. Summary of Verified Application. As noted before, the Verified Application seeks the approval of a voluntarily negotiated first amendment to the interconnection agreement between Ameritech Indiana and DSLnet. The First Amendment is alleged to be for the purpose of incorporating and implementing the terms and conditions of the FCC's First 706 Order⁴, including amendments to Article XII of the adopted agreement. (¶ 3, Verified Application, at p. 2) More specifically, the First Amendment adopts additional rules applicable to collocation and spectrum comparability.

The Verified Application asserts that, as contemplated by Section 252(e)(2)(A) of the Act, the First Amendment does not discriminate against any telecommunications carrier not a party to the First Amendment and implementation of the First Amendment is consistent with the public interest, convenience and necessity. It states Ameritech Indiana will make the arrangements provided under the First Amendment available to any other requesting telecommunications carrier under the same terms and conditions as those provided in the First Amendment in accordance with Section 252(i) of the Act.⁵ (¶ 6, Verified Application, at p. 3)

3. Discussion and Findings.

The First Amendment purports to incorporate the rates, terms and conditions of the FCC's First 706 Order. However, the Commission's review of the First Amendment reveals that the amendment does not incorporate all terms and conditions of the FCC's First 706 Order for the following reasons:

a. Article XII, section 12.2.2(3), includes the following language:

...provided, that the foregoing limitation shall not preclude Ameritech from assigning Requesting Carrier Cageless Physical Collocation accessed by a separate entrance or door or constructing same so long as Requesting Carrier has access to such space... twenty-four (24) hours a day, seven days a week ("24 x 7") and such separate entrance does not delay Requesting Carrier's Collocation or

⁴ In the Matter of Applications for Transfer of Control to SBC Communications, Inc. of Licenses and Authorizations Held by Ameritech Corporation. (CC Docket No. 98-141), released October 8, 1999.

⁵ Section 252(i) of the Act provides as follows:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS. - A local exchange carrier shall make available any interconnection, service, or network element under any agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

increase the cost for Requesting Carrier to collocate (excluding any permitted recovery of costs attributable to reasonable security measures).

47 CFR 51.323(k)(2), as adopted by the FCC's First 706 Order, states the following: "An incumbent LEC may require collocating carriers to use a central entrance to the incumbent's building, but may not require construction of a new entrance for competitor's use, and once inside the building, incumbent LECs must permit collocating carriers to have direct access to their equipment." (emphasis added)

The FCC's rules clearly preclude Ameritech from requiring the construction of a separate entrance as described in Article XII, Section 12.2.2(3) of the First Amendment.

b. **Article XII, section 12.2.3(b)** includes the following language concerning the recovery of costs for the preparation of shared cage collocation:

When making New Shared Collocation available, Ameritech shall... (ii) prorate the Preparation Charges incurred by Ameritech to construct the shared Collocation cage or condition the space for Collocation use among the Resident Collocators utilizing the New Shared Collocation space, by determining the total charges to make that space available and allocating that charge to each Resident Collocator based on the percentage of total space utilized by that carrier; provided, that the percentage of total space divided among the Resident Collocators in a New Shared Collocation space equals one hundred percent (100%) of such Preparation Charges. Allocation of Preparation Charges shall only occur upon the initial delivery of New Shared Collocation and Ameritech shall not be required to adjust such allocation if another Resident Collocator subsequently shares such space.

In contrast, paragraph 51 of the FCC's First 706 Order states, "...incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation."

In the tendered First Amendment, 100% of the charges for New Shared Collocation must be allocated to the Resident Collocators. Thus, if a single carrier (DSLnet) initially requests shared collocation with the intention of subletting additional space in the shared collocation cage to other carriers at a future date, DSLnet will have to pay for the entire cost of the shared collocation cage. In contrast, the FCC's First 706 Order envisions that if DSLnet only uses 20 percent of the collocation cage space, it would only reimburse Ameritech Indiana for 20 percent of the preparation costs. Alternately, if DSLnet and another CLEC simultaneously request New Shared Collocation, and individually use 20 percent of that shared collocation cage, Article XII, section 12.2.3(b) would appear to allocate 100 percent of the New Shared Collocation costs to the two carriers, even though their combined share should only equal 40 percent.

Indeed, the first sentence in section 12.2.3(b) states that "New Shared Collocation is available in minimum increments of 50 square feet (per caged space dimensions, not per carrier). Each resident collocator in a New Shared Collocation Arrangement must utilize at least one rack or bay in such space." If Ameritech Indiana allowed DSLnet more flexibility in the size of the New Shared Collocation (e.g., DSLnet and another CLEC could request a shared collocation cage that is large enough for their respective equipment but less than 50 square feet), this Commission would be less concerned about the First Amendment language. The 50 square foot requirement reinforces our concern that DSLnet and other carriers seeking New Shared Collocation will be required to pay Ameritech Indiana charges that equal 100% of the preparation costs, even those these carriers may not use 100% of the space in the shared collocation cage. If the 50 square foot minimum were eliminated, DSLnet and other CLECs could pay preparation charges that are equal to the space they request, since the shared collocation cage would not have to include any excess space.

Furthermore, the statement that Ameritech Indiana shall not adjust the allocation of preparation charges should another carrier subsequently seek to enter the shared collocation cage seems to reinforce the fact that DSLnet might be required to reimburse Ameritech Indiana for New Shared Collocation costs in a manner that is in direct conflict with Paragraph 51 of the FCC's First 706 Order.

c. Article XII, section 12.8.2(b) states that Ameritech Indiana will provide DSLnet with Premises Reports, or reports that describe the amount of physical collocation space in a central office in time intervals that differ by the number of reports submitted. The intervals are 10 days, 25 days, and 25 or more days. According to paragraph 58 of the FCC's First 706 Order, the ILEC must make reports of this nature available within 10 days of a CLEC's request. Specifically, the FCC stated, "We also adopt our tentative conclusion that an incumbent LEC must submit to a requesting carrier within 10 days of the submission of the request a report indicating the incumbent LEC's available space in a particular LEC premises." Thus, any interval more than 10 days does not comply with the FCC's First 706 Order.

d. Article XII, section 12.12.1(b) imposes time intervals on Ameritech Indiana's response to DSLnet's collocation application. According to this section, the intervals vary from 10-20 days depending on the number of collocation applications submitted by DSLnet. According to paragraph 55 of the FCC's First 706 Order, "We view 10 days as a reasonable period of time within which to inform a new entrant whether its collocation application is accepted or denied." Thus, intervals longer than 10 days do not comply with the FCC's First 706 Order.

Commission Conclusion. It appears that the language described above does not comply with the provisions of the FCC's First 706 Order. Since the First Amendment states that it was negotiated to incorporate the terms and conditions of the FCC's First 706 Order, and yet includes provisions that fail to comply with the First 706 Order, we do not approve language which states that the agreement is in compliance, specifically:

- **WHEREAS, the Federal Communications Commission ("FCC") on March 31, 1999 released its First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 98-147, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability (the "First 706 Order"), wherein the FCC adopted several measures to promote competition in the advanced services market, including adopting additional rules applicable to Collocation and spectrum comparability; and**
- **WHEREAS, the Parties are entering into this Amendment to incorporate into the Agreement the rates, terms and conditions that reflect the First 706 Order.**

However, upon a review of the record in this matter, the Commission finds no reasonable grounds exist upon which to support a finding that the remainder of the First Amendment between Ameritech Indiana and DSLnet submitted for approval in this Cause should be rejected under the criteria established by Section 252(e)(2)(A) of the Act. We find that the First Amendment does not discriminate against any telecommunications carrier not a party to the First Amendment and that such First Amendment is consistent with the public interest, convenience and necessity. We would note, however, that this First Amendment was filed prior to the FCC's approval of the merger between SBC Communications Inc. and Ameritech Corporation, and imposition of conditions, and were the First Amendment to be filed today, we would review its compliance with the FCC's Merger Order in our deliberations regarding the question of whether it is in the public interest.

We take administrative notice of provisions in the SBC/Ameritech merger conditions that must be available on a prospective basis to DSLnet and other CLECs, specifically Paragraphs 37 and 38 of Attachment C of the FCC's Merger Order, which state the following:

37. In the SBC/Ameritech Service Area, SBC/Ameritech shall provide collocation consistent with the Commission's [FCC] rules, including the First Report and Order in CC Docket No. 98-147, FCC No. 99-48 (rel. March 31, 1999)("Collocation and Advanced Services Order").

38. Prior to the Merger Closing Date, SBC and Ameritech shall, in each of the SBC/Ameritech states, have filed a collocation tariff and/or offered amendments containing standard terms and conditions for collocation for inclusion in interconnection agreements under 47 U.S.C. Section 252. Such tariffs and/or amendments shall contain the rates, terms and conditions necessary to bring SBC/Ameritech's provision of collocation into compliance with the Commission's [FCC] governing rules.

As stated earlier in this order, the First Amendment between DSLnet and Ameritech does not comply with the terms and conditions of the FCC's First 706 Order. Since the amendment was filed on September 24, 1999, prior to the FCC's October 6, 1999 Order approving the SBC/Ameritech merger, the Commission is not required to consider Ameritech Indiana's compliance with Paragraphs 37 and 38 from Attachment C of the Merger Order in its review of the First Amendment. However, the Commission expects that forthcoming interconnection agreements or amendments to existing interconnection agreements between Ameritech Indiana

and other telecommunications carriers will comply with the FCC's First 706 Order, as required by these paragraphs. Therefore, the Commission should not see the terms and conditions in the DSLnet/Ameritech Indiana First Amendment that do not comply with the FCC's First 706 Order, as described above, in future interconnection agreements between Ameritech Indiana and other telecommunications carriers.

In addition to imposing the terms and conditions of the FCC's First 706 Order, the FCC's October 6, 1999 Order approving the SBC/Ameritech merger imposed other conditions that seem to conflict with the provisions of the DSLnet/Ameritech Indiana First Amendment. For example, paragraph 21 of Attachment C of the FCC's Merger Order includes the following language:

"...during this interim period and subject to true-up, unbundled loops of less than 12,000 feet (based on theoretical loop length) that could be conditioned to meet the minimum requirements defined in the associated SBC/Ameritech technical publications through the removal of load coils, bridged taps, and/or voice repeaters will be conditioned at no charge to the requesting Advanced Services provider."

The Commission understands that this condition is available to CLECs from the Merger Closing Date (October 8, 1999) until the IURC has established rates for loop conditioning for Ameritech Indiana. However, Article XII, section 2.1.4 of the First Amendment between DSLnet and Ameritech Indiana, which deals with loop conditioning charges, does not include language that offers DSLnet free loop conditioning pursuant to the provisions in paragraph 21 of the merger conditions, as stated above. The Commission is aware that this condition was not available to DSLnet when this First Amendment was submitted to the Commission for approval; however, this Commission sees nothing that would preclude DSLnet from availing itself of this provision in the future. Furthermore, we expect Ameritech Indiana to offer the terms and conditions contained in the FCC's Merger Order and attached merger conditions, including paragraph 21, to CLECs on a forward-looking basis.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

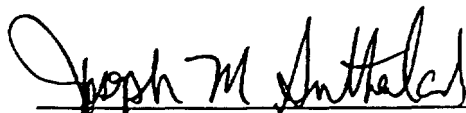
1. The First Amendment between Ameritech Indiana and DSLnet submitted for Commission approval on September 24, 1999 be, and is hereby, approved pursuant to Section 252(e)(1) of the Act, consistent with the findings set forth in Paragraph 3 of this Order above.
2. This First Amendment, as approved, shall be made available for public inspection and copying within 10 days after the date of this Order pursuant to Section 252(h) of the Act.

3. This Order shall be effective on and after the date of its approval.

**McCARTY, KLEIN, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR:
APPROVED:**

DEC 15 1999

I hereby certify that the above is a true
and correct copy of the Order as approved.

A handwritten signature in black ink, appearing to read "Joseph M. Sutherland", is written over a horizontal line.

Joseph M. Sutherland
Secretary to the Commission

STATE OF INDIANA



INDIANAPOLIS 46204

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

January 18, 2000

Mr. Lawrence Strickling
Chief of the Common Carrier Bureau
Federal Communications Commission
445 12 Street SW
Washington, DC 20554

Dear Chief Strickling:

The Indiana Utility Regulatory Commission Staff (IURC Staff) has been reviewing the interconnection agreement filed jointly by Indiana Bell Telephone Company d/b/a Ameritech Indiana (Ameritech Indiana) and Diversified Communications, Inc. (Diversified), a competitive local exchange carrier (CLEC). This agreement was voluntarily negotiated pursuant to Section 252(a)(1) of the Telecommunications Act of 1996 and was submitted to the IURC for approval pursuant to Section 252(e) on November 8, 1999.

It is the understanding of the IURC Staff that the SBC/Ameritech Merger Conditions, as described in Appendix C of the FCC's Merger Order, require SBC/Ameritech to provide collocation consistent with the FCC's First 706 Order (Section 37) and file a tariff and/or offer amendments to existing interconnection agreements "to bring SBC/Ameritech's provision of collocation into compliance with the Commission's governing rules." (Section 38) After an initial review of the interconnection agreement, the IURC Staff believes that the agreement may not comply with the terms and conditions of the First 706 Order, as described below. The IURC found that identical language contained in a voluntarily negotiated amendment to an interconnection agreement between Ameritech Indiana and DSLnet Communications, LLC did not comply with First 706 Order for the same reasons. (Order on First Amendment, Cause No. 40572 INT 17, December 15, 1999). A copy of this order is enclosed.

a. Article XII, Section 12.2.2(3) of the interconnection agreement includes the following language:

...provided, that the foregoing limitation shall not preclude Ameritech from assigning Requesting Carrier Cageless Physical Collocation accessed by a separate entrance or door or constructing same so long as Requesting Carrier has access to such space... twenty-four (24) hours a day, seven days a week ("24 x 7") and such separate entrance does not delay Requesting Carrier's Collocation or increase the cost for Requesting Carrier to collocate (excluding any permitted recovery of costs attributable to reasonable security measures).

The IURC Staff believes that the FCC's rules, specifically 47 CFR 51.323(k)(2), preclude Ameritech Indiana from requiring the construction of a separate entrance as described in Article XII, Section 12.2.2(3) of the agreement.

b. Article XII, Section 12.2.3(b) includes the following language concerning the recovery of costs for the preparation of shared cage collocation:

When making New Shared Collocation available, Ameritech shall... (ii) prorate the Preparation Charges incurred by Ameritech to construct the shared Collocation cage or condition the space for Collocation use among the Resident Collocators utilizing the New Shared Collocation space, by determining the total charges to make that space available and allocating that charge to each Resident Collocator based on the percentage of total space utilized by that carrier; provided, that the percentage of total space divided among the Resident Collocators in a New Shared Collocation space equals one hundred percent (100%) of such Preparation Charges. Allocation of Preparation Charges shall only occur upon the initial delivery of New Shared Collocation and Ameritech shall not be required to adjust such allocation if another Resident Collocator subsequently shares such space.

Paragraph 51 of the First 706 Order states, "...incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation."

In the Ameritech Indiana/Diversified agreement, 100 percent of the charges for New Shared Collocation must be allocated to the Resident Collocators. The IURC Staff believes that this language would require a single carrier (Diversified) to pay for the entire cost of the shared collocation cage even if the carrier initially requests shared collocation with the intention of subletting additional space to other carriers at a future date. In contrast, the IURC Staff interpretation of the First 706 Order would require Diversified to only reimburse Ameritech Indiana for 20 percent of the preparation costs if Diversified uses 20 percent of the shared collocation cage space. Alternately, if Diversified and another CLEC simultaneously request New Shared Collocation, and individually use 20 percent of that shared collocation cage, Article XII, Section 12.2.3(b) would appear to allocate 100 percent of the New Shared Collocation costs to the two carriers, even though their combined share should only equal 40 percent.

Indeed, the first sentence in Section 12.2.3(b) states that "New Shared Collocation is available in minimum increments of 50 square feet (per caged space dimensions, not per carrier). Each resident collocator in a New Shared Collocation Arrangement must utilize at least one rack or bay in such space." The IURC Staff would be less concerned about the agreement language if Diversified was allowed more flexibility in the size of the New Shared Collocation (e.g., Diversified and another CLEC could request a shared collocation cage that is large enough for their respective equipment but less than 50 square feet). The 50 square foot requirement reinforces the IURC Staff's concern that Diversified and other carriers seeking New Shared

Collocation will be required to pay Ameritech Indiana more than their proportionate share of the preparation costs.

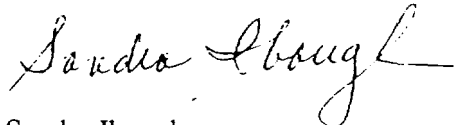
c. Article XII, Section 12.8.2(b) states that Ameritech Indiana will provide Diversified with premises reports, or reports that describe the amount of physical collocation space in a central office, in time intervals that differ by the number of reports submitted. The intervals are 10 days, 25 days, and 25 or more days. According to paragraph 58 of the First 706 Order, the ILEC should make reports of this nature available within 10 days of a CLEC's request. The IURC Staff asks the FCC to clarify whether any interval greater than 10 days complies with the First 706 Order.

d. Article XII, Section 12.12.1(b) imposes time intervals on Ameritech Indiana's response to Diversified's collocation application. According to this section, the intervals vary from 10-20 days depending on the number of collocation applications submitted by Diversified. According to paragraph 55 of the FCC's First 706 Order, the ILEC should make reports of this nature available within 10 days of a CLEC's request. The IURC Staff asks the FCC to clarify whether intervals longer than 10 days comply with the First 706 Order.

The IURC Staff respectfully requests an interpretation or clarification of the First 706 Order with respect to the issues described herein. The IURC must approve or reject the Ameritech Indiana/Diversified agreement no later than February 4, 2000.

Thank you in advance for your assistance.

Cordially,



Sandra Ibaugh
Director of Telecommunications
Indiana Utility Regulatory Commission

CC: Robert C. Atkinson - Deputy Bureau Chief, Common Carrier Bureau
Ken Moran - Chief, Accounting Safeguards Division
Michelle Carey - Deputy Chief, Policy and Program Planning Division
Anthony Dale - Accounting Safeguards Division, FCC
William McCarty - Chairman, IURC
Camie Swanson-Hull - Commissioner, IURC

Enclosure